IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.5183 OF 2005

IN

CRIMINAL APPEAL NO.742 OF 2005

Tanaji Dadasaheb Sargar : Applicant.

versus

The State of Maharashtra : Respondent.

Mr.Rahul S. Kate for the applicant.

Smt.V.R.Bhosale, APP, for the State.

CORAM : D.G.DESHPANDE

V.K.TAHILRAMANI JJ.

DATED : MAY 02, 2006.

ORAL ORDER

1. This is an application for bail by the applicant/accused who has been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and, he has also been convicted under Section 25 of the Arms Act and sentenced to suffer R.I. for 3 years.

Both the sentences were to run concurrently.

2. Deceased in this case is Avinash Navnath Tate. One Pratapsingh Subhashrao Babar owned one Hero Honda motor cycle. Deceased Avinash had taken this motor cycle from Pratapsingh and parked it at Shivaji square at Vairag. At that time this accused started motor cycle without consent of Avinash - the deceased. As a result, Avinash got enraged and he slapped the accused and abused him. Deceased Avinash also disclosed this fact to Pratapsingh. But accused gave threat to deceased Avinash through Pratapsingh.

3. On 5.8.2004 at 8.30 a.m. deceased Avinash again took this motor cycle from Pratapsingh and he went to bazaar for bringing rope. At that time Shrikant Bharat Sankpal was also at the house of Pratapsingh being his brother in law. At about 9.00 a.m. Shrikant informed Pratapsingh that Avinash Tate and Tanaji Sargar fell down from the motor cycle and both had sustained injuries. Therefore, Pratapsingh and Shrikant went to the spot. They found that Avinash was unconscious while accused was moaning. A group of people lifted Avinash and

brought him to hospital of Dr.Salve at Vairag. Some others brought the accused in that hospital. Both were examined by doctor and shifted to Jagdale Mama Hospital at Barshi. In that hospital Avinash was declared dead and accused was admitted. Avinash died because of bullet injury. There were some injuries to the accused. It was learnt that deceased Avinash was driving the motor cycle and Tanaji Sargar - the accused was the pillion rider.

4. Panchanama of body of Avinash was made. Offence under Section 302 of the Indian Penal Code and under Section 25 of the Arms Act was registered vide C.R.No.55/04. Accused was discharged from Barshi Hospital on 5.8.2004 but he was arrested along with his clothes. On 7.8.2004, the accused made a statement that he had concealed two cartridges in the box in the hospital of Dr.Salve. A panchanama was prepared and two live cartridges were recovered from the box below the table in the hospital of Dr.Salve at the instance of the accused. Similarly three more cartridges were recovered at the instance of accused from the counter of his shop under a panchanama. Blood stained clothes of the accused

were seized so also the clothes of the victim and in this background the accused came to be prosecuted and convicted.

5. The counsel for the accused contended that the weapon was not recovered in this case. The accused who was sitting as a pillion rider had no occasion to fire from pistol or revolver. He also pointed out that as per the evidence of doctor, the bullet was hit from the back side but the injury of entry was larger than the injury of exist which was on the opposite side and, therefore, according to the advocate for the accused, this creates suspicion about the prosecution case. He also pointed out that, according to doctor, the bullet was fired beyond powder range i.e. beyond a distance of 2 ft. and that was not possible if the accused was pillion rider. Therefore, according to him, for all these reasons the accused was entitled for bail.

6. The learned APP, appearing for the State, strongly opposed this bail application and contended that forensic expert’s report has clearly shown that the bullet fired at the

deceased and cartridges recovered at the distance of accused tallied as per the report of forensic expert and this was, therefore, more than sufficient to prove the connection of the accused. So far as injuries on the back being larger than the injury is concerned, the doctor himself has explained that in certain circumstances this is possible.

7. The learned counsel appearing for the accused lastly contended that if the bullet was fired from a distance of more than 2 ft. then it could not have been fired by the present accused.

8. We are not impressed by the submissions made by the learned counsel appearing for the accused. Because there is no denial of fact that the accused was the pillion rider. The injury to the victim is exactly at the centre of his back and if that is so and if the accused was sitting as pillion rider, then no other person could have fire short, because accused was fully covering the entire back of the victim. This is, therefore, not a case for bail. The Criminal Application No.5183 of 2005 is rejected.

[D.G.DESHPANDE,J]

[V.K.TAHILRAMANI,J]